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in favor of a surety who has bonded one officer of a corporation, so as to relieve him from the obligations of his bond, by imputing to the corporation knowledge acquired by another employee subsequent to the execution of the bond (and from negligence or wrongful motives, not disclosed to the corporation), of a wrong committed by the official whose faithful performance of duty was guaranteed by the bond."

PUBLIC POLICY—STIPULATION ALLOWING PAYMENT ONLY IF MONEY NOT BORROWED FROM ANOTHER.—Plaintiff borrowed from defendant a sum of money for ten years, giving his note therefor, secured by a mortgage upon real estate. The note contained a clause giving plaintiff the privilege, at any time after one year, of making payments upon the principal, but there was also a stipulation that the privilege should not avail if "the money tendered is borrowed in whole or in part elsewhere." Some time after the first year, the plaintiff tendered the whole amount due upon the note and mortgage, which tender the defendant declined to receive unless plaintiff would make an affidavit that the money tendered had not been borrowed, in whole or in part, elsewhere. Plaintiff refused to make this affidavit, and brought this action to secure a release of the mortgage, tendering in court the full amount of the indebtedness. *Held*, that plaintiff was entitled to the relief sought. *Union Central L. Ins. Co.* v. *Champlin* (1901),——Okla. ——, 65 Pac. Rep. 836, 55 L. R. A. 109.

The court held that the stipulation limiting the right of payment was void. "The principle deducible from the authorities is that any stipulation, agreement or contract which forbids the debtor from discharging his obligation by borrowing money, in whole or in part, except from the creditor, is subversive of the rights of the individual, injurious to the public at large, and is therefoxe void on the high ground of public policy." No cases were cited.

RES JUDICATA—OPERATION AGAINST A STATE.—A state statute provided for the appointment of certain local officers by the governor, and the governor made the appointment. The city authorities, claiming to have the appointing power, appointed others. The state, by its attorney-general, sought to have the governor's appointees installed and the city's appointees ousted. The supreme court held the statute unconstitutional, and confirmed the title of the officers appointed by the local authorities. (*State* v. *Moores*, 55 Neb. 480, 76 N. W. 175, 41 L. R. A. 624). The question was raised again in a variety of forms until the court reversed the decision wherein it had held the statute unconstitutional. (*State* v. *Kennedy*, 60 Neb. 300, 83 N. W. 87; *Redell* v. *Moores*, 63 Neb. ——, 88 N. W. 243). It was then sought to compel the governor to make appointments under the original act to supersede the local appointees. *Held*, that the first decision, confirming the title of the local appointees, although erroneous, was *res adjudicata*, *State* v. *Savage* (1902), —— Neb. ——, 90 N. W. Rep. 898.

The court held that the doctrine of *res judicata* operated against the state as against a private litigant, relying upon *Holsworth* v. *O'Chander*, 49 Neb. 42, 68 N. W. 334; *O'Connell* v. *Chicago, etc. R. Co.*, 184 Ill. 308, 56 N. E. 355; *People* v. *Smith*, 93 Cal. 445, 29 Pac. 64; *McClerky* v. *State*, 4 Tex. Civ. App. 322, 23 S. W. 518. "The right of the mayor's appointees to hold the offices," said the court, "was the thing adjudged in *State* v, *Moores*, and it is the only thing to be adjudged in this action. The decision in the *Moores Case* is not law, but for the purposes of this litigation it stands in place of the law. The governor may, of course, appoint, but, in the face of a plea of *res judicata*, we cannot put his appointees in possession of the offices. The court is held in bondage by its own error. '*Stat pro ratione voluntas*' is the rule of decision for this case."

SALES—CONSIDERATION—MUTUALITY.—Defendant agreed to sell, and plaintiff agreed to buy, "all the oil t might require for its own use for a period of twelve months." *Held*, not